



Docket No.: 9988.058.00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
LEE, Soon Jo *et al.*

Customer No.: 30827

Application No.: 10/663,997

Confirmation No.: 1982

Filed: September 17, 2003

Art Unit: 3749

For: TOP COVER STRUCTURE FOR A CLOTHES
DRYER

Examiner: Stephen Michael Gravini

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANT'S BRIEF

Sir:

The Appellant hereby submits this Appeal Brief in response to a Final Rejection of all pending claims that was mailed on February 11, 2008 (hereinafter "*Office Action*") and the Advisory Action mailed on May 22, 2008. A Notice of Appeal was filed August 8, 2008.

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This brief contains items under the following headings as required by 37 C.F.R. § 41.37(c):

- I. Real Party In Interest**
- II. Related Appeals and Interferences**
- III. Status of Claims**
- IV. Status of Amendments**
- V. Summary of Claimed Subject Matter**
- VI. Grounds of Rejection to be Reviewed on Appeal**
- VII. Argument**
- VII. Conclusion**
- Claims Appendix**
- Evidence Appendix**
- Related Proceedings Appendix**

I. **REAL PARTY INTEREST**

The real party in interest for this appeal is: LG Electronics Inc.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

Total Number of Claims in the Application

There are 5 claims pending in this application.

Current Status of Claims:

Claims canceled: Claim 6.

Claims withdrawn from consideration but not canceled: None.

Claims pending: Claims 1- 5.

Claims allowed: None.

Claims rejected: Claims 1- 5.

Claims on Appeal: Claims 1-5.

IV. STATUS OF AMENDMENTS

The Examiner issued a Final Rejection on February 11, 2008. A Notice of Appeal was filed on August 8, 2008. No amendments were filed in response to the Final Rejection. Accordingly, claims 1-5 are currently pending and are reflected in the Claims Appendix.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 is directed to a clothes dryer, as shown in Figures 3-5, comprising a base (1) forming a floor of a body (B), a front cabinet (2) forming a front portion of the body, a side cabinet (3) forming side portions of the body, a back cover (4) forming a back portion of the body, a control panel (6) having a hook (600), the hook having a first end disposed on a surface of the control panel and a second end; a top cover (5) forming a top of the body wherein the top cover has a predetermined curvature (page 7, paragraph [0022], lines 5-6), and wherein the control panel is provided on a rear portion of the top cover (page 7, paragraph [0022], lines 4-5), the top cover comprising a groove (510) provided at a rear portion of the top cover wherein the second end of the hook inserts into a hole (530) disposed in the groove in the top cover (page 7, paragraph [0022], lines 6-8), and a fire wall (8) made of metal disposed below the second end of the hook inserted into the groove in the top cover (page 7, paragraph [0022], line 8), and the fire wall directing a fluid toward an outside of the body when fluid leaks through the hole (page 8, paragraph [0026], lines 3-6).

Independent claim 4 is directed to a laundry dryer, as shown in Figures 3-5, comprising a body (B), a top cover (5) covering the body, the top cover including a groove (510) which runs along a width of the top cover wherein the groove directs fluid on the top cover toward an exterior of the laundry dryer (page 8, paragraph [0025], lines 2-4), at least one hole (530) disposed in the groove, a control panel (6) including a hook (600) disposed at a surface of the control panel opposite the top cover wherein the hook is configured for insertion into the at least one hole, and a fire wall (8) disposed below the top cover and the entire structure of the hook (600), wherein the firewall has a curvature (page 7, paragraph [0023], lines 1-2) such that when a

fluid leaks through the hole onto the firewall, the fluid is directed toward an outside of the body
(page 8, paragraph [0026], lines 1-4).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- (A) Whether the rejection of claims 1-5 is proper under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,738,424 issued to *Katz et al.* (hereinafter “*Katz*”).
- (B) Whether the rejection of claims 1-5 is proper under the judicially created doctrine of obviousness-type double patenting over claims 1-11 of U.S. Patent No. 7,192,102 (hereinafter “*the '102 patent*”) in view of *Katz*.

VII. ARGUMENT

A. **Independent claims 1 and 4 and claims 2, 3 and 5 which variously depend therefrom, are NOT anticipated by *Katz* under 35 U.S.C. §102(b).**

In order for a claim to be anticipated by a single prior art reference under 35 U.S.C. §102(b), each and every element, as set forth in the claim, must be either expressly or inherently described in the reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

1. *Katz* fails to anticipate independent claim 1.

Independent claim 1 recites a clothes dryer which includes, “a base forming a floor of a body; a front cabinet forming a front portion of the body; a side cabinet forming side portions of the body; a back cover forming a back portion of the body; a control panel having a hook, the hook having a first end disposed on a surface of the control panel and a second end; a top cover forming a top of the body wherein the top cover has a predetermined curvature, and wherein the control panel is provided on a rear portion of the top cover, the top cover comprising a groove provided at a rear portion of the top cover, wherein the second end of the hook inserts into a hole disposed in the groove in the top cover; and a fire wall made of metal disposed below the second end of the hook inserted into the groove in the top cover and the fire wall directing a fluid toward an outside of the body when fluid leaks through the hole.”

In rejecting claim 1, the Examiner relies on *Katz*'s Figures 3 and 4. Specifically, the Examiner alleges that *Katz* discloses each and every feature of the claimed invention. The Appellant respectfully disagrees. For convenience of the Board, Figures 3 and 4 are reproduced below.

The reference fails to disclose the claimed invention. Rather, *Katz* discloses an appliance

backsplash assembly. The Examiner alleges that *Katz's* reference number 20 (FIG. 4) anticipates "a top cover." However, one of ordinary skill in the art would never construe the control mounting plate 20 disclosed by *Katz* as a "top cover," as claimed. Specifically, as shown in the figures, all surfaces of control mounting plate 20 are planer. Therefore, *Katz* cannot possibly disclose that "the top has a predetermined curvature," as recited in the claim.

Fig. 3

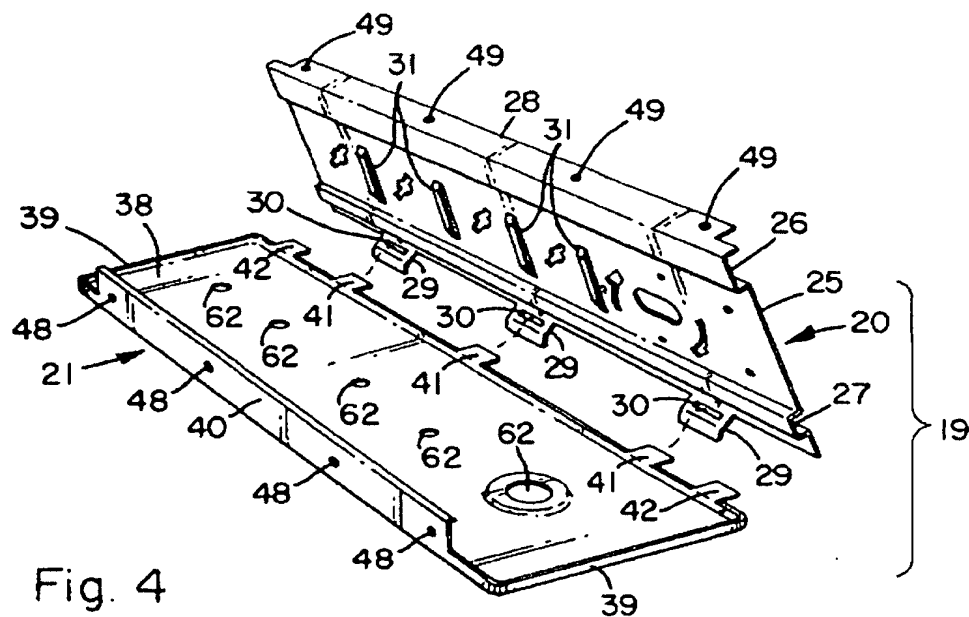
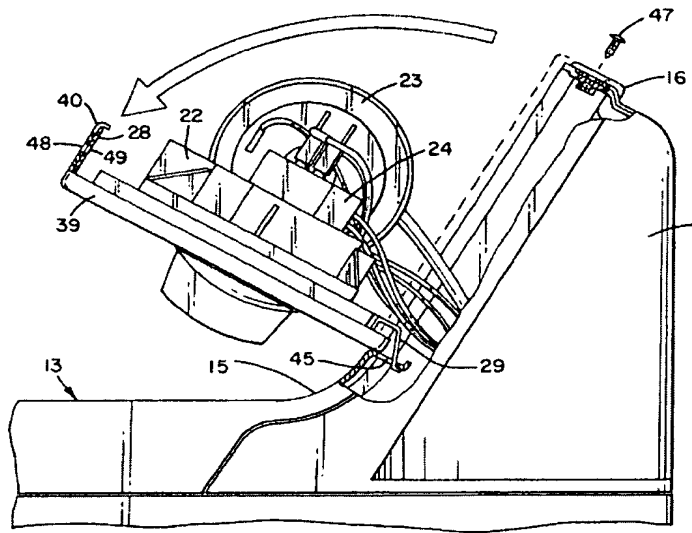


Fig. 4

Further, even if, *assuming arguendo*, one of ordinary skill in the art would construe cover member 21 (FIG. 4) as “a control panel,” as alleged, *Katz* fails to disclose that cover member 21 “is provided on a rear portion of” control mounting plate 20. In fact, *Katz* discloses just the opposite.

As shown in Figures 3 and 4, cover member 21 is located in front of control mounting plate 20. Further, cover member 20 includes graphical designs to communicate information associated with the corresponding controls 22-24. *See column 2, lines 34-37*. Therefore, since cover member is provided on the front portion of control mounting plate and any rearrangement would conceal the graphical information needed by the user, *Katz* cannot possibly be construed to disclose “a control panel” and “a top cover” where “the control panel is provided at a rear portion of the top cover,” as recited in the claim.

In addition, *Katz* fails to disclose “a groove,” as claimed. The Examiner relies on tab 29 to allegedly anticipate this feature. However, tab 29 is a structure used to mount control panel assembly 19 to machine 10. *See column 2, lines 52-56*. One of ordinary skill in the art would never construe a mounting projection as “a groove,” as claimed.

Nevertheless, even if, *assuming arguendo*, tab 29 could possibly be construed as “a groove,” as claimed, *Katz* fails to disclose “the second end of the hook inserts into a hole disposed in the groove in the top cover.” As previously discussed, *Katz* fails to disclose the claimed “top cover.” Therefore, *Katz* cannot possibly disclose “a hole disposed in the groove in the top cover.”

Finally, *Katz* fails to disclose the claimed “fire wall.” The Examiner relies on column 1, line 57 to column 3, line 41 of *Katz*’s disclosure to allegedly anticipate the claimed “fire wall.”

In other words, the Examiner relies on the entire written description of *Katz* without particularly pointing out any structure that is relied upon to anticipate “a fire wall.”

Nevertheless, the Appellant has thoroughly reviewed the reference and *Katz* fails to disclose any structure that directs “a fluid toward an outside body when fluid leaks through the hole,” much less any structure that could possibly be construed as being “made of metal disposed below the second end of the hook inserted into the groove in the top cover,” as recited in the claim.

For at least any or all of the abovementioned reasons, *Katz* fails to disclose each and every feature claimed in claim 1 and thus the rejection under 35 U.S.C. §102(b) is improper. Accordingly, the Appellant respectfully requests that the Board set aside the Examiner’s finding that *Katz* anticipates independent claim 1.

2. *Katz* fails to anticipate claim 2.

Claim 2, which depends from independent claim 1, further recites that “the fire wall has the same predetermined curvature as the top cover.”

Since *Katz* fails to disclose a fire wall and a top cover having a predetermined curvature, one of ordinary skill would never construe the reference to anticipate this feature.

For at least any or all of the abovementioned reasons, *Katz* fails to disclose each and every feature claimed in claims 1 and 2 and thus the rejection under 35 U.S.C. §102(b) is improper. Accordingly, the Appellant respectfully requests that the Board set aside the Examiner’s finding that *Katz* anticipates dependent claim 2.

3. Katz does not anticipate claim 3.

Claim 3, which depends from independent claim 1, further recites that “the groove is provided along a rear side of the top cover and the groove has the same predetermined curvature as the top cover.”

As previously discussed, *Katz* fails to disclose a groove and a top cover having a predetermined curvature. Therefore, one of ordinary skill would never construe the reference to anticipate this feature.

For at least any or all of the abovementioned reasons, *Katz* fails to disclose each and every feature claimed in claims 1 and 3 and thus the rejection under 35 U.S.C. §102(b) is improper. Accordingly, the Appellant respectfully requests that the Board set aside the Examiner’s finding that *Katz* anticipates dependent claim 3.

4. Katz fails to anticipate independent claim 4.

Independent claim 4 recites a laundry dryer which includes among other features, “a body; a top cover covering the body, the top cover including: a groove which runs along a width of the top cover wherein the groove directs fluid on the top cover toward an exterior of the laundry dryer; at least one hole disposed in the groove; a control panel including a hook disposed at a surface of the control panel opposite the top cover wherein the hook is configured for insertion into the at least one hole; and a fire wall disposed below the top cover and the entire structure of the hook; wherein the firewall has a curvature such that when a fluid leaks through the hole onto the firewall, the fluid is directed toward an outside of the body.”

In rejecting claim 4, the Examiner relies on Figures 3 and 4. Specifically, the Examiner alleges that *Katz* discloses each and every feature of the claimed invention. The Appellant respectfully disagrees. Please refer to the Figures above.

Katz fails to disclose “a groove,” as claimed. Again, the Examiner relies on tab 29 to allegedly anticipate this feature. As previously discussed, tab 29 is a structure used to mount control panel assembly 19 to machine 10. *See column 2, lines 52-56*. One of ordinary skill in the art would never construe a mounting projection as “a groove,” as claimed.

Nevertheless, even if, *assuming arguendo*, one skilled in the art did construe tab 29 as “a groove,” the tab cannot possibly direct “fluid on the top cover toward an exterior of the laundry dryer.” *Katz* discloses that tab 29 is interior to the appliance. Moreover, *Katz* fails to disclose any structure that could possibly be construed to direct fluid from the interior of the appliance “toward an exterior,” as recited in the claim. Further since *Katz* fails to disclose “a groove,” as claimed, *Katz* cannot possibly be construed to disclose “at least one hole disposed in the groove.”

Finally, *Katz* fails to disclose the claimed “fire wall.” As previously discussed, the Examiner relies on column 1, line 57 to column 3, line 41 of *Katz*’s disclosure to allegedly anticipate the claimed “fire wall.” In other words, the Examiner relies on the entire written description of *Katz* without particularly pointing out any structure that is relied upon to anticipate “a fire wall.”

Nevertheless, the Appellant has thoroughly reviewed the reference and *Katz* fails to disclose any structure that is “disposed below the top cover and the entire structure of the hook; wherein the has a curvature such that when fluid leaks through the hole onto the firewall, the fluid is directed toward an outside of the body,” as recited in the claim.

For at least any or all of the abovementioned reasons, *Katz* fails to disclose each and every feature claimed in claim 4 and thus the rejection under 35 U.S.C. §102(b) is improper. Accordingly, the Appellant respectfully requests that the Board set aside the Examiner's finding that *Katz* anticipates independent claim 4.

5. *Katz* fails to anticipate claim 5.

Claim 5, which depends from independent claim 4, recites that "the top cover has a curvature."

The Examiner relies on the covering of the body illustrated in Figure 1 to allegedly anticipate the claimed "top cover." *See Office Action, page 3.* However, even if, *assuming arguendo*, one skilled in the art construed such structure as "a top cover," the artisan would recognize that this structure is planar. Therefore, *Katz* cannot possibly disclose that "the top cover has a curvature," as claimed.

For at least any or all of the abovementioned reasons, *Katz* fails to disclose each and every feature claimed in claims 4 and 5 and thus the rejection under 35 U.S.C. §102(b) is improper. Accordingly, the Appellant respectfully requests that the Board set aside the Examiner's finding that *Katz* anticipates dependent claim 5.

B. Claims 1-5 are patentably distinguishable over claims 1-11 of the '102 patent under the judicially created doctrine of obviousness-type double patenting.

In order to reject claims under the judicially created doctrine of obviousness-type double patenting, the allegedly conflicting claims are not required to be identical, but at least one claim in the examined application must be considered to be not patentably distinct from the claims of the reference.

For the convenience of the Board, independent claims 1 and 4 of the instant application and independent claims 1 and 6 of *the '102 patent* are reproduced below.

U.S. App No. 10/663,997

Claim 1: A clothes dryer comprising:
 a base forming a floor of a body;
 a front cabinet forming a front portion of the body;
 a side cabinet forming side portions of the body;
 a back cover forming a back portion of the body;
 a control panel having a hook, the hook having a first end disposed on a surface of the control panel and a second end;
 a top cover forming a top of the body wherein the top cover has a predetermined curvature, and wherein the control panel is provided on a rear portion of the top cover, the top cover comprising a groove provided at a rear portion of the top cover, wherein the second end of the hook inserts into a hole disposed in the groove in the top cover; and
 a firewall made of metal disposed below the second end of the hook inserted into the groove in the top cover and the fire wall directing a fluid toward an outside of the body when fluid leaks through the hole.

Claim 4: A laundry dryer comprising:
 a body;
 a top cover covering the body, the top cover including:
 a groove which runs along a width of the top cover wherein the groove directs fluid on the top cover toward an exterior of the laundry dryer;
 at least one hole disposed in the groove;
 a control panel including a hook disposed at a surface of the control panel opposite the top cover wherein the hook is configured for insertion into the at least one hole; and
 a fire wall disposed below the top cover and the entire structure of the hook; wherein the firewall has a curvature such that when a fluid leaks through the hole onto the firewall, the fluid is directed toward an outside of the body.

U.S. Patent No. 7,192,102

Claim 1: A control panel assembly of a home appliance, the assembly comprising:
 a control panel having a curved contour;
 a display panel having a portion that follows the curved contour of said control panel; and
 a fused planer contact between said display panel and said control panel, wherein said display panel is provided with a first interlocking part along one edge and said control panel is provided with a second interlocking part that receives the first interlocking part.

Claim 14: A control panel assembly of a home appliance, the assembly comprising:
 a control panel including a portion having a nonplanar contour; and
 a display panel having a contour that follows the nonplanar contour of the control panel;
 wherein the display panel is secured to the non-planar portion of the control panel by fused portions, said display panel is provided with a first interlocking part along one edge and said control panel is provided with a second interlocking part that receives the first interlocking part.

The Examiner fails to properly analyze how claims 1-5 of the instant application are rendered obvious over claims 1-11 of *the '102 patent*. Instead, the Examiner simply alleges that the “patented invention discloses the claimed invention except for the claimed hole and groove disposal.” *Office Action, page 3*. The Appellant respectfully disagrees.

As previously discussed, *Katz* fails to disclose the claimed groove and hole. Therefore, even if, *assuming arguendo*, one skilled in the art contemplated modifying the claims of *the '102 patent* in view of *Katz*, as suggested, the resulting modification would fail to teach or suggest each and every feature of the claimed invention.

Accordingly, the rejection of claims 1-5 of the instant application under the judicially created doctrine of obviousness-type double patenting over claims 1-11 of *the '102 patent* is improper. Accordingly, the Appellant respectfully requests that the Board set aside the Examiner’s finding of obviousness-type double patenting.

VIII. CONCLUSION


For reasons as discussed above, claims 1-5 are improperly rejected under 35 U.S.C. §102(b) as being anticipated by *Katz* and claims 1-5 are improperly rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-11 of *the '102 patent*.

This Honorable Board is respectfully requested to reverse the rejections set forth in the final Office Action and direct the Examiner to pass this application to issue.

If these papers are not considered timely filed by the Patent and Trademark Office, then a petition is hereby made under 37 C.F.R. §1.136, and any additional fees required under 37 C.F.R. §1.136 for any necessary extension of time, or any other fees required to complete the filing of this response, may be charged to Deposit Account No. 50-0911. Please credit any overpayment to deposit Account No. 50-0911.

Dated: December 8, 2008

Respectfully submitted,

By 

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Attachments

CLAIMS APPENDIX

Claims Involved in the Appeal of Application Serial No. 10/663,997

1. A clothes dryer comprising:
 - a base forming a floor of a body;
 - a front cabinet forming a front portion of the body;
 - a side cabinet forming side portions of the body;
 - a back cover forming a back portion of the body;
 - a control panel having a hook, the hook having a first end disposed on a surface of the control panel and a second end;
 - a top cover forming a top of the body wherein the top cover has a predetermined curvature, and wherein the control panel is provided on a rear portion of the top cover, the top cover comprising a groove provided at a rear portion of the top cover, wherein the second end of the hook inserts into a hole disposed in the groove in the top cover; and
 - a fire wall made of metal disposed below the second end of the hook inserted into the groove in the top cover, and the fire wall directing a fluid toward an outside of the body when fluid leaks through the hole.
2. The clothes dryer of claim 1, wherein the firewall has the same predetermined curvature as the top cover.
3. The clothes dryer of claim 1, wherein the groove is provided along a rear side of the top cover and the groove has the same predetermined curvature as the top cover.
4. A laundry dryer comprising:
 - a body;
 - a top cover covering the body, the top cover including:

a groove which runs along a width of the top cover wherein the groove directs fluid on the top cover toward an exterior of the laundry dryer;

at least one hole disposed in the groove;

a control panel including a hook disposed at a surface of the control panel opposite the top cover wherein the hook is configured for insertion into the at least one hole; and

a fire wall disposed below the top cover and the entire structure of the hook; wherein the firewall has a curvature such that when a fluid leaks through the hole onto the firewall, the fluid is directed toward an outside of the body.

5. The laundry dryer of claim 4, wherein the top cover has a curvature.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

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None.